

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 JUNE HACKLER,)
5)
6 Petitioner,)
7)
8 vs.)
9)
10 CITY OF HERMISTON,) LUBA No. 97-140
11)
12 Respondent,) FINAL OPINION
13) AND ORDER
14 and)
15)
16 AL A. DEDRICK and LOUISE M.)
17 DEDRICK,)
18)
19 Intervenors-Respondent.)

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22 Appeal from City of Hermiston.

23
24 George L. Anderson, Hermiston, filed the petition for
25 review and argued on behalf of petitioner.

26
27 No appearance by respondent.

28
29 Derek Caplinger and Steven H. Corey, Pendleton, filed
30 the response brief on behalf of intervenors-respondent.
31 With them on the brief was Corey, Byler, Rew, Lorenzen &
32 Hojem. Steven H. Corey argued on behalf of intervenors-
33 respondent.

34
35 HANNA, Administrative Law Judge; LIVINGSTON,
36 Administrative Law Judge, participated in the decision.

37
38 REMANDED 12/19/97

39
40 You are entitled to judicial review of this Order.
41 Judicial review is governed by the provisions of ORS
42 197.850.

1 Opinion by Hanna.

2 **NATURE OF THE DECISION**

3 Petitioner appeals the city's comprehensive plan map
4 change from Medium Density Residential to Medium
5 Density/Mobile Home Residential and a zone change from
6 Multiple-Family Residential (R-3) to Multi-Structure
7 Residential (R-4).

8 **MOTION TO INTERVENE**

9 Al and Louise Dedrick (intervenors), the applicants
10 below, move to intervene in this proceeding on the side of
11 respondent. There is no objection to the motion and it is
12 allowed.

13 **FACTS**

14 Intervenors applied for a plan map amendment and a
15 zoning map change that would allow them to construct a
16 recreational vehicle park on 4.15 acres of land for which
17 they have an option to purchase. The city provided timely
18 notice of the proposal, indicating that intervenors intended
19 to build a recreational vehicle park, and that the criterion
20 applicable to the decision is City Zoning Ordinance 1840
21 (CZO), Section 26(4.2). That section sets forth the
22 approval criteria for any amendment of a zoning ordinance.
23 On June 11, 1997, the planning commission approved
24 intervenors' application. Following a hearing on June 23,
25 1997, the city council approved the application. The
26 written decision states in its entirety:

1 SECTION 1. The following described land area
2 shall be changed on the City comprehensive plan
3 map from 'Medium Density Residential' to Medium
4 Density/Mobile Home Residential' and on the zoning
5 map from Multiple-Family Residential (R-3) to
6 Multi-Structure Residential (R-4):

7 "A 4.15 acre parcel described as 8-1 4N 28 11BA
8 Tax Lot 400;

9 "All located in the City of Hermiston, Umatilla
10 County, Oregon.

11 "This ordinance was read in full for its first
12 reading at the council meeting of June 23, 1997,
13 in full for its second reading at the council
14 meeting of July 14, 1997, and shall take effect on
15 August 13, 1997."

16 The mayor signed the challenged decision on July
17 14,1997. This appeal followed.

18 **FIRST ASSIGNMENT OF ERROR**

19 Petitioner argues that the city's findings are
20 inadequate to change the plan map and zoning map because
21 they do not identify the criteria and standards relevant to
22 the decision.

23 Intervenor responds that when the city council approved
24 the application on July 23, 1997 it made oral findings of
25 fact that are reflected in the minutes of the proceeding.¹

¹The minutes set forth the following:

"Councilor Hardin moved and Councilor Smally seconded to adopt the following findings of fact as adopted by the planning commission:

- "1. Public notice requirements have been met by publication in the local newspaper, and no objections have been received as a result of that publication.

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- "2. All properties within 300 feet of the periphery of the site were provided a direct mailing of the proposal. One objection was received as a result of that mailing from June Hackler.
 - "3. Notice of the proposed action was sent to the Department of Land Conservation and Development (DLCD) on April 25, 1997, more than 45 days prior to the final hearing in accord with OAR 660-18-020. The notice to DLCD listed Umatilla County as an agency which may be interested or impacted by the proposal. No comments were received.
 - "4. The proposed change will promote compact urban development because the subject property is within the city limits.
 - "5. The proposed change will facilitate economic provision of urban facilities and services because the City has utility lines adjacent to the subject property in N. E. 4th Street to accommodate development of the property.
 - "6. Portions of the subject property are identified in the comprehensive plan as subject to ground water pollution hazards due to a high water table. The applicants will comply with the conditions on the development imposed by the development hazard overlay of the zoning ordinance so Hermiston's water quality will be protected.
 - "7. The subject properties can be served by appropriate levels of police and fire services, water, sewer and storm drainage facilities, streets and pedestrian facilities, and energy and communication service.
 - "8. The applicant states that there is a public need for the rezoning because there is a short supply of vacant land with a medium density/mobile home designation available in the city.
 - "9. The change is based on the lack of R-4 zoned land in the city and the appropriateness of the zone to the neighborhood.
 - "10. The applicant states that changing the zoning from R-3 to R-4 would not have an adverse impact on the area because the surrounding area is characterized by multi-family dwellings, a mobile home park, open space and the City of Hermiston Public Works Department. The applicant feels the proposed medium density/mobile home residential

1 Additionally, intervenor refers to the planning commission
2 findings of fact and the staff report as including the
3 substantive criteria and findings of fact explaining:

4 "As set forth on the audio tape * * * the adopted
5 findings of fact as read by [the] Planning
6 Commission Chairperson * * * identify the
7 applicable criteria and standards, and the
8 applicable goals and polices." Intervenors' Brief
9 5.

10 Petitioner's argument raises two issues: the
11 incorporation of documents into the final decision, and the
12 adequacy of the findings in a decision. In Johnson v. Lane
13 County, 31 Or LUBA 454 (1996) we addressed the standard a
14 local government must meet to incorporate all or a portion
15 of a document into its decision:

16 "If a local government wishes to incorporate all
17 or portions of another document by reference into
18 its findings, it must (1) clearly indicate its
19 intent to do so, and (2) clearly identify the
20 document or portions of the document so
21 incorporated. Gonzalez v. Lane County, 24 Or LUBA
22 251, 259 (1992). A local government decision will
23 satisfy these requirements if a reasonable person
24 reading the decision would realize that another
25 document is incorporated into the findings and,
26 based on the decision itself, would be able both
27 to identify and to request the opportunity to
28 review the specific document thus incorporated."
29 Id. at 460-61.

30 The challenged decision, dated July 14, 1997, does not
31 incorporate by reference or even mention findings. Although
32 intervenor refers us to the council minutes, the planning

development will be compatible with the surrounding
area." Record 20-21.

1 commission minutes and the staff report as constituting the
2 elements of adequate findings, it is the July 14, 1997
3 decision of the city council, not the extraneous documents,
4 that is before us for review.

5 In reviewing the various sources pointed to by
6 intervenor as constituting the elements of adequate
7 findings, it is appropriate to set forth the findings
8 standard.² Findings must (1) identify the relevant approval
9 standards, (2) set out the facts which are believed and
10 relied upon, and (3) explain how those facts lead to the
11 decision on compliance with the approval standards. Heiller
12 v. Josephine County, 23 Or LUBA 551, 556 (1992); see also,
13 Sunnyside Neighborhood v. Clackamas Co. Comm., 280 Or 3, 20-
14 21, 569 P2d 1063 (1977); Vizina v. Douglas County, 17 Or
15 LUBA 829, 835 (1989). The city's findings do not satisfy
16 these requirements.

17 The first assignment of error is sustained.

18 Because we conclude that the challenged decision as a
19 whole lacks adequate findings, no purpose would be served in
20 addressing petitioner's second findings challenge.

21 The city's decision is remanded.

²For the benefit of the parties, we note that conclusory statements and statements of the applicant are inadequate to meet the finding test set forth above. Additionally, the statewide planning goals and rules may be applicable criteria for a proposed comprehensive plan map amendment.